

City of Galveston



Legal Department / P. O. Box 779 / Galveston, Texas 77553-0779 / (409) 766-2152

April 23, 1993

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Honorable Dan Morales
Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

Opinion Committee

RQ-552

Re: Request for Information
Jim Mabe

Dear Mr. Morales:

On April 14, 1993, Mr. Benjamin Davis, Assistant City Manager/Personnel Director, was delivered the request for information from Mr. Jim Mabe, a copy of which is attached hereto as Exhibit "A".

Upon reviewing the personnel files of the two individuals, certain information was found which the City of Galveston believes is protected from disclosure under the applicable subsections of Texas Revised Civil Statutes, Article 6252-17a, Section 3(a).

The personnel files contain medical information which is protected from disclosure by Section 3(a)(1), information made confidential by statute. The information was compiled at the direction of a physician and is made confidential by Texas Revised Civil Statutes, Article 4495b, Section 5.08. ORD 455.

The home address and telephone number of each employee has been protected from disclosure pursuant to a request to do so made by the employee as provided in section 3(a)(17). A copy of each request to close the information is attached hereto as Exhibit "B".

The driver's license classification of each employee has been protected from disclosure pursuant to Section 3(a)(1), information made confidential by statute, Texas Revised Civil Statutes, Article 6687b(21)(j)(3). ORD 498.

The City of Galveston believes that each employee's social security number is protected from disclosure by Section 3(a)(1), information made confidential by law as 42 USC, Section 405(c)(vii) expresses the intent that social security account numbers are confidential and shall not be disclosed and 42 USC, Section

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408(a)(8) makes it a felony to disclose a social security account number in violation of the laws of the United States.

The City of Galveston believes that the number of dependents, the names of the beneficiaries of each employee, and any retirement projection information is protected from disclosure pursuant to Section 3(a)(2), privacy interests. The public can have no legitimate interest in the number of dependents that an employee has or claims. Such a matter is purely personal and involves such private matters as procreation. This information is highly intimate. The only use imaginable for this information is to harass or intimidate the employee. The information has no relationship to the employee's service to the City. Similarly, there is no legitimate need of the public to know the person(s) named as beneficiary of an employee. This information is intimate and relates to the right of a person to associate with others and to make financial plans and decisions. To release the information could chill the exercise of the employee's right of association. Further, a legitimate need for the information cannot be reasonably imagined. The information has no relationship to the employee's service to the City.

The projection of future retirement benefits should be protected from disclosure. This information can reflect personal financial decisions. This is highly intimate information for which there is no legitimate need for the public to possess. In similar situations, the fact that a person participates in a deferred compensation plan has been protected from disclosure. In particular, the decisions of how the person was participating was protected. ORD 471 and 545. This information is a projection of what may occur if certain factors come to pass. It is not fact. To release it could provide inaccurate information, which is of no benefit to the public.

The City of Galveston believes that any W-4 forms requesting the withholding of income taxes from an employee's salary are protected from disclosure by Section 3(a)(1), information made confidential by statute, in that 46 USC 6103 makes return information confidential and tax withheld is defined as return information therein.

The City of Galveston believes that all statements of opinions contained in reference checks are protected from disclosure by Section 3(a)(11) which protects from disclosure interagency communications which contain opinion. To require disclosure of the advice, opinion and recommendation will likely cause persons to be less open and frank in revealing their opinions about potential

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city employees. The City must be able to gain full and frank advice, opinion and recommendations about potential employees in order to provide a competent and able work force to serve the taxpayers efficiently. Such information is vital to the City making proper employment decisions. ORD 565.

Similarly, the City of Galveston believes that the employee evaluations are protected from public disclosure by Section 3(a)(11) as the evaluation consists of advise, opinion and recommendations that is used in the decision-making process concerning the employment of each employee. To release such advise, opinion and recommendation to the public would chill the future open and frank expression of advice, opinion and recommendation hampering the efficient operation of the City to the detriment of the taxpayers. ORD 565.

All other information is being made available for Mr. Mabe's inspection. Under separate cover I am forwarding the information not provided to Mr. Mabe, highlighting the deleted information.

Please advise me of your opinion of whether the information is protected from disclosure.

Yours very truly,


Gary W. Smith
City Attorney

GWS/aj

Enclosure

cc: Douglas W. Matthews, City Manager
Benjamin L. Davis, Assistant City Manager/Personnel Director
Jim Mabe